

DEPARTMENT OF STATE REVENUE

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Letter of Findings: 02-20170274
Memorandum of Decision: 02-20170275R
Penalty
For the Years 2011 through 2014

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Document.

HOLDING

For 2011 and 2012, Corporation demonstrated reasonable cause and thus the underpayment penalty was abated. Corporation however was responsible for a reduced underpayment penalty for 2013 and 2014 because it failed to affirmatively demonstrate reasonable cause for its failure to remit the required sufficient estimated payments.

ISSUE

I. Tax Administration - Underpayment Penalty.

Authority: IC § 6-3-4-4.1; IC § 6-8.1-10-2.1.

Taxpayer protests the Department's partial refund denials and a proposed assessment which stemmed from its amended income tax returns, arguing that the underpayment penalty should be abated.

STATEMENT OF FACTS

Taxpayer is an out-of-state company doing business in Indiana. Beginning in tax year 2011, Taxpayer qualified for the Indiana "enterprise zone credit wages" ("Credits") to reduce its Indiana income tax liability. Taxpayer claimed the Credits in its Indiana corporate income tax returns (Form IT-20) each year and elected to carry forward the remaining Credits it did not use.

The Indiana Department of Revenue ("Department") adjusted Taxpayer's returns which reduced the Credits to be carried forwarded. As a result, the Department assessed Taxpayer additional income tax in March 2016. Taxpayer contacted the Department inquiring further on the calculation. A computer programming error was found in computing Taxpayer's income tax liability and Taxpayer was advised to amend its 2011 - 2014 returns to reflect the proper amount of carryovers regarding the Credits.

Taxpayer subsequently amended its 2011 - 2014 returns (Form IT-20Xs). Upon review of Taxpayer's IT-20Xs, the Department adjusted the filings (to account for the underpayment penalty), and afterwards refunded Taxpayer the remaining overpayments. The Department reduced the amounts of refund claimed in Taxpayer's 2011, 2013, and 2014 amended returns. For 2012, the Department determined that Taxpayer underpaid its estimated payments and was not entitled to any refund. The Department assessed an underpayment penalty for 2012 as a result.

Taxpayer timely protested the partial refund denials and the proposed assessment. A hearing was held. This decision ensues. Additional facts will be provided as necessary.

DISCUSSION

I. Tax Administration - Underpayment Penalty.

Upon review of Taxpayer's 2011 - 2014 amended returns, the Department refunded Taxpayer - after applying the underpayment penalty - reduced amounts of the overpayment for 2011, 2013, and 2014. For 2012, Taxpayer was assessed an underpayment penalty because the Credits were insufficient to reduce its tax liability. The Department's partial refund denials for 2011, 2013, and 2014 as well as the proposed assessment for 2012

stemmed from the imposition of the underpayment penalty for all the years. Taxpayer requested that the underpayment penalty to be abated.

IC § 6-3-4-4.1, in relevant part, states:

(c) Every corporation subject to the adjusted gross income tax liability imposed by this article shall be required to report and pay an estimated tax equal to the lesser of:

- (1) twenty-five percent (25[percent]) of such corporation's estimated adjusted gross income tax liability for the taxable year; or
- (2) the annualized income installment calculated in the manner provided by Section 6655(e) of the Internal Revenue Code as applied to the corporation's liability for adjusted gross income tax.

A taxpayer who uses a taxable year that ends on December 31 shall file the taxpayer's estimated adjusted gross income tax returns and pay the tax to the department on or before April 20, June 20, September 20, and December 20 of the taxable year. If a taxpayer uses a taxable year that does not end on December 31, the due dates for filing estimated adjusted gross income tax returns and paying the tax are on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year. The department shall prescribe the manner and forms for such reporting and payment.

(d) The penalty prescribed by [IC 6-8.1-10-2.1](#)(b) shall be assessed by the department on corporations failing to make payments as required in subsection (c) or (f). However, no penalty shall be assessed as to any estimated payments of adjusted gross income tax which equal or exceed:

- (1) the annualized income installment calculated under subsection (c); or
- (2) twenty-five percent (25[percent]) of the final tax liability for the taxpayer's previous taxable year.

In addition, the penalty as to any underpayment of tax on an estimated return shall only be assessed on the difference between the actual amount paid by the corporation on such estimated return and twenty-five percent (25[percent]) of the corporation's final adjusted gross income tax liability for such taxable year.

IC § 6-8.1-10-2.1(d) states that "[i]f a person subject to the penalty imposed under this section can show that the failure to . . . pay the full amount of tax shown on the person's return, . . . or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty."

Taxpayer in this instance requested that the penalty to be abated, stating in part as follows:

[Taxpayer] received notices of proposed assessment in March of 2016. These notices were related to a subtraction taken for "enterprise zone credit wages." . . .

On February 13th, 2017 [Taxpayer] received another notice of proposed assessment related to the underpayment of estimates. These appear to be the result of the carryforwards from previous years being less than estimated. There was also confusion as to whether the estimates would be annualized. The inadvertent mistake surrounding the erroneous modification only exacerbated the issue. In addition, the seasonal nature of [Taxpayer's] business makes estimating income difficult in the current year. . . .

Upon review, the Department's records showed that the Department's computer system erroneously adjusted Taxpayer's available Credits for the 2011 tax year without notifying Taxpayer of the adjustment. Without proper notice to Taxpayer, Taxpayer was not able to timely address the underlying issues of the proposed assessment, regardless of whatever the issues might have been at that time. The erroneously reduced Credits for 2011 were then carried forward to be applied in the 2012 tax year, which, in turn, resulted in additional underpayment for 2012. Thus, the Department agrees that the underpayment penalty for the 2011 and 2012 tax years should be abated.

For tax years 2013 and 2014, however, Taxpayer received adequate notice of the proposed assessment regarding the difference in calculation. In turn, Taxpayer should have been able to resolve the issues but it failed to do so. A further review of the Department's records showed that even if the now corrected amounts of Credits available to be carried forward were to be applied, the Credits would have remained insufficient. In other words, even after abating the 2011 and 2012 underpayment penalty, Taxpayer's additional Credits from those two years were insufficient to be carried forward and applied to the 2013 year. Taxpayer explained that the nature of its business may have caused the confusion and thus the underpayment. Given the totality of the circumstances, however, the Department is not able to abate the penalty without additional supporting information to affirmatively

demonstrate reasonable cause. Specifically, Taxpayer chose to conduct its business of the "seasonal nature" - and is in a better position than the Department - to maintain its records and estimate its income tax liability. With the now corrected Credits to be carried forward, the underpayment penalty would be assessed in a lesser amount and Taxpayer was responsible for a reduced amount of the underpayment penalty for the 2013 and 2014 years.

FINDING

Taxpayer's protest of the underpayment penalty is sustained, in part, and is denied, in part. The underpayment penalty for 2011 and 2012 will be abated. However, Taxpayer remained responsible for the underpayment penalty for 2013 and 2014.

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